

Government
Information
Technology
Agency

Statewide POLICY

P252 Rev 2.0

TITLE: Intellectual Property and
Fair Use

Effective Date: September 12, 2008

1. AUTHORITY

The Government Information Technology Agency (GITA) shall develop, implement and maintain a coordinated statewide plan for information technology (IT) (A.R.S. § 41-3504(A (1))) including formulation of policies to effectuate the purposes of the agency (A.R.S. § 41-3504(A (13))).

2. PURPOSE

The purpose is to establish a statewide policy on the fair use of Licensed Software, considered as intellectual property, for the State of Arizona. Intellectual property refers to property rights created through intellectual and/or discovery efforts of a software creator that are generally protected under a patent, trademark, copyright, trade secret, trade dress and/or other federal and/or state laws.

3. SCOPE

This applies to all budget units. A budget unit is defined as a department, commission, board, institution or other agency of the state organization receiving, expending, or disbursing state funds or incurring obligations of the state including the Arizona Board of Regents but excluding the universities under the jurisdiction of the Arizona Board of Regents, the community college districts and the legislative or judicial branches. A.R.S. § 41-3501(2).

The Budget Unit Chief Executive Officer (CEO), working in conjunction with the Budget Unit Chief Information Officer (CIO), shall be responsible for ensuring the effective implementation of Statewide Information Technology Policies, Standards, and Procedures (PSPs) within each budget unit.

4. POLICY

In an effort to fully comply with all legal provisions governing copyright laws and authorial integrity, budget units shall only use computer software as identified below. Each budget unit shall protect computer software and data (e.g., subscription, copyright, vendor-proprietary, etc.) as specified in use agreements and as required by law. Use agreements shall be in final form as accepted by the State and the manufacturer/ supplier.

- 4.1. **Public Domain:** Also known as Freeware, is copyrighted software given away for free by the author. The author retains the copyright, allowing use only as expressly allowed. Usually this means that the software can be copied in accordance with its copyright notice, but cannot be sold.
- 4.2. **Shareware:** Copyrighted software that is distributed at no cost for a fixed evaluation period. The software license agreement contains a provision that using the software beyond the fixed evaluation period requires the recipient to pay the license fee stated in the original usage agreement. Shareware must be removed after the initial evaluation period, if it is not purchased. Once purchased,

Shareware shall be protected in accordance with manufacturer/supplier requirements.

- 4.3. **General Public License:** A public legal document whereby a licensee has agreed to have read, understood, and complied with all of the terms and conditions of obtaining, using, copying, modifying and distributing software and/or documentation, usually without a fee or royalty.
- 4.4. **Licensed software:** An agreement by a software publisher placing restrictions on the use of its software in addition to what copyright laws provide and sometimes known as “*End User License Agreements*,” “*Site License Agreements*,” or “*Enterprise License Agreements*.” The procurement of licensed software shall be in accordance with Arizona Department of Administration (ADOA) Enterprise Procurement Services (EPS) statutes and requirements. Licensed software shall be protected in accordance with manufacturer/supplier requirements.
- 4.5. **Gratis software:** Developed by or for other local governments, counties, cities, states, Federal government, and/or private sector(s), with a written bona fide record of contribution.
- 4.6. **Contract Developed:** Computer software developed and implemented for the State by a State of Arizona employee(s) or consultant(s) under State contract, unless otherwise explicitly provided for in the related State contract.

5. DEFINITIONS AND ABBREVIATIONS

Refer to the PSP Glossary of Terms located on the GITA website for definitions and abbreviations.

6. REFERENCES

- 6.1. A. R. S. § 41-621 et seq., “Purchase of Insurance; coverage; limitations, exclusions; definitions.”
- 6.2. A. R. S. § 41-1335 ((A (6 & 7))), “State Agency Information.”
- 6.3. A. R. S. § 41-1339 (A), “Depository of State Archives.”
- 6.4. A. R. S. § 41-1461, “Definitions.”
- 6.5. A. R. S. § 41-1463, “Discrimination; unlawful practices; definition.”
- 6.6. A. R. S. § 41-1492 et seq., “Prohibition of Discrimination by Public Entities.”
- 6.7. A. R. S. § 41-2501 et seq., “Arizona Procurement Codes, Applicability.”
- 6.8. A. R. S. § 41-3501, “Definitions.”
- 6.9. A. R. S. § 41-3504, “Powers and Duties of the Agency.”
- 6.10. A. R. S. § 41-3521, “Information Technology Authorization Committee; members; terms; duties; compensation; definition.”
- 6.11. A. R. S. § 44-7041, “Governmental Electronic Records.”
- 6.12. Arizona Administrative Code, Title 2, Chapter 7, “Department of Administration Finance Division, Purchasing Office.”
- 6.13. Arizona Administrative Code, Title 2, Chapter 10, “Department of Administration Risk Management Division.”
- 6.14. Arizona Administrative Code, Title 2, Chapter 18, Government Information Technology Agency.”
- 6.15. Statewide Policy P100, Information Technology.
- 6.16. Digital Millennium Copyright Act (1998).
- 6.17. Title 17 United States Code.

6.18. Title 18 United States Code § 2319 & 2320.

7. ATTACHMENTS
None.